



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 357-24
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO █ USN RET,
XXX-XX-█

Ref: (a) Title 10 U.S.C. § 1552
(b) DoD 7000.14-R
(c) PL 117-263 § 643

Encl: (1) DD Form 149 w/attachments
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her naval record be corrected to reflect declined participation in the Survivor Benefit Plan (SBP).

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 21 August 2024 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval record, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, she exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. In accordance with reference (b), SBP elections must be made prior to retired pay becoming payable and the election to participate in or decline SBP is irrevocable. If not all requirements for an election needing the spouse's concurrence have been satisfied prior to retirement, for whatever reason, full spouse costs, and coverage will be implemented, regardless of any request by the member to do otherwise. Any change in SBP election subsequent to retirement will be done through an administrative correction of records as permitted by law.

b. Pursuant to reference (c), a person participating in the SBP on the day before the first day of the open season may elect to discontinue such participation during the open season. The open season described in this subsection is the period beginning on the date of the enactment of this Act and ending on 1 January 2024. Reference (c) was enacted on 23 December 2022.

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XXX-XX-[REDACTED]

- c. On 8 May 2017, Petitioner entered active duty.
- d. On 14 November 2021, Petitioner married [REDACTED] and divorced on 14 November 2021. Judgment of Dissolution and Notice of Entry of Judgement – Marriage did not direct SBP Former Spouse coverage.
- e. On 25 July 2022, Petitioner married [REDACTED].
- f. Petitioner transferred to the Permanent Disability Retired List (PDRL) effective 28 October 2022 and automatically enrolled in SBP Spouse coverage. The Defense Finance and Accounting Service (DFAS) did not receive a DD Form 2656, Data for Payment of Retired Personnel for Petitioner prior to retirement.
- g. On 3 March 2023, Petitioner signed and submitted DFAS-CL 1077, Survivor Benefit Plan (SBP) Withdrawal Consent with spousal concurrence.
- h. On 27 March 2023, the DFAS received Petitioner’s DD Form 2656-2, Survivor Benefit Plan (SBP) Termination Request with spousal concurrence, and Petitioner’s DD Form 2656-8, Survivor Benefit Plan (SBP) – Automatic Coverage Fact Sheet.
- i. On 11 April 2023, Petitioner signed Survivor Benefit Plan (SBP) and Reserve Component Survivor Benefit Plan (RCSBP) Open Season Election to Discontinue Participation form with spousal concurrence. [REDACTED] reflects Petitioner’s SBP Spouse coverage discontinued on 2 May 2023 due to decline coverage via 2023 Open Season Election.
- j. On 28 March 2024, the DFAS issued Petitioner notification indicating “We received your request to discontinue from the Survivor Benefit Plan (SBP) during the 2023 SBP Open Season on 02-May-2023. After review, we have found that your request is valid and it have been processed with an effective date of 01-Jun-2023.”

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting the following corrective action. Petitioner was automatically enrolled in SBP Spouse only coverage due to the DFAS not receiving a DD Form 2656 prior to her transfer to the PDRL. Although the proper administrative requirements were not completed, the Board determined Petitioner demonstrated her intentions to not participate in SBP with the concurrence of her spouse. Had Petitioner received adequate counseling on completing a DD Form 2656 prior to her transfer to the PDRL, she would have declined with spouse’s concurrence. Therefore, the Board determined that under these circumstances, relief is warranted.

RECOMMENDATION

That Petitioner’s naval record be corrected, where appropriate, to show that:

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Petitioner elected to decline participation in SBP with proper spousal concurrence prior to transferring to the PDRL effective 28 October 2022.

Note: The DFAS will complete an audit of Petitioner's pay records to determine amounts due, if any.

A copy of this report of proceedings will be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

9/6/2024

